### **Regulation of Escrow Businesses Act**

- **32-7-101. Title and purpose.** (1) This part must be known and may be cited as the "Regulation of Escrow Businesses Act".
- (2) It is the intent of the legislature that the escrow industry be supervised and regulated by the department of administration in order to protect the citizens of the state and to provide that the business practices of the escrow industry are fair and orderly among the members of the escrow industry, with due regard to the ultimate consumers in this important area of property protection.

History: En. Sec. 1, Ch. 651, L. 1989; amd. Sec. 102, Ch. 483, L. 2001.

- **32-7-102. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:
- (1) "Department" means the department of administration as provided for in Title 2, chapter 15, part 10.
  - (2) "Director" means the director of the department of administration.
- (3) "Escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making payments under any encumbrance of the property, delivers any written instrument, money, evidence, title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, or bailor or to any agents or employees pursuant to the written escrow instructions.
- (4) "Escrow business" means a commercial activity characterized by the regular and continuous carrying on of escrow transactions.
- (5) "Licensee" means a person holding a valid license under this part as an escrow business.
- (6) "Person" means an individual, cooperative, association, company, firm, partnership, corporation, or other legal entity.

History: En. Sec. 2, Ch. 651, L. 1989; amd. Sec. 103, Ch. 483, L. 2001.

- **32-7-103.** Exemptions. (1) The provisions of this part do not apply to the following:
- (a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;
- (b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;
- (c) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies and the person is regulated by the commissioner of insurance;
- (d) a financial institution, as defined in <u>32-6-103</u>, that has its escrow accounts regularly audited or examined. The financial institution must supply a copy of the most

recently prepared audit or examination to the director upon his request.

- (e) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if he is performing an act:
  - (i) in the course of or incidental to a single real estate transaction; and
  - (ii) for which a real estate license is required; and
  - (f) any person furnishing escrow services under the order of a court.
- (2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part.

History: En. Sec. 3, Ch. 651, L. 1989.

**32-7-104.** Exemption or exception -- burden of proof. In any proceeding under this part, the burden of proving an exemption or exception from a definition is upon the person claiming it.

History: En. Sec. 4, Ch. 651, L. 1989.

### 32-7-105 through 32-7-107 reserved.

- **32-7-108. Director -- powers and duties.** (1) The director shall exercise general supervision and control over persons doing escrow business in this state.
  - (2) In addition to the other duties imposed upon him by law, the director shall:
  - (a) adopt reasonable rules necessary to effectuate the purposes of this part;
- (b) conduct examinations and investigations that may be necessary to determine whether a person has engaged or is about to engage in any act or practice constituting a violation of any provisions of this part;
- (c) conduct examinations, investigations, and hearings necessary and proper for the efficient administration of this part; and
- (d) establish fees commensurate with the costs of issuing the license and examining an escrow business.

History: En. Sec. 5, Ch. 651, L. 1989.

- **32-7-109. Application for license -- bond -- issuance.** (1) A person must be licensed pursuant to this part before engaging in an escrow business.
- (2) To obtain a license, an applicant shall file with the director an application for an escrow business license. The application must be in writing, verified by oath, and in the form prescribed by the director. The application must set forth:
  - (a) the location of the applicant's principal office and all branch offices in this state;
  - (b) the name and form under which the applicant plans to conduct business;
  - (c) the general plan and character of the business;
- (d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each the respective capacity and title;
- (e) the experience and qualifications of the persons proposed to act as officers and managers;

- (f) the length of time the applicant has been engaged in the escrow business; and
- (g) any other relevant information the director requires.
- (3) An applicant shall file with the license application a bond in an amount to be set by the department by rule. The bond must be conditioned on the applicant conducting the escrow business in accordance with the requirements of law. All bonds must be filed with the department, approved by the department, and renewed annually.
  - (4) The director shall grant and issue an escrow business license if:
  - (a) the director has received the bond and application specified in this section; and
- (b) the applicant has complied with all the requirements of this part and any rules promulgated under it.
- (5) An escrow business shall immediately notify the department of any material change in the information contained in the application.

History: En. Sec. 6, Ch. 651, L. 1989; amd. Sec. 1, Ch. 65, L. 2003.

- **32-7-110. Fees.** (1) (a) An applicant for licensure shall pay an initial license fee of \$350.
- (b) Licenses expire annually on June 30. A licensee shall, on or before June 1, pay an annual license renewal fee of \$100. A licensee's failure to pay the annual license renewal fee within the time prescribed results in an automatic revocation of the license.
- (c) A licensee may be charged an examination fee based on the actual costs of the examination.
- (2) All fees collected by the department for the licensure and examination of escrow businesses must be paid to the state treasurer to the credit of the state special revenue fund for use by the department in its licensure and examination functions under this part.

History: En. Sec. 11, Ch. 651, L. 1989; amd. Sec. 2, Ch. 65, L. 2003.

**32-7-111. Transferability.** An escrow business license is not transferable or assignable. The provisions of this section apply to the change of ownership of any escrow business, including the change of control over any corporation licensed as an escrow business. For purposes of this section, "change of control" means the transfer of 25% or more of the outstanding voting stock of the corporation.

History: En. Sec. 7, Ch. 651, L. 1989.

#### 32-7-112 through 32-7-114 reserved.

- **32-7-115. Maintenance of records.** (1) A licensee shall establish and maintain the books, accounts, and records necessary to enable the director at any time to determine whether the escrow transactions performed by the licensee comply with the provisions of this part. The books, accounts, and records must be maintained in accordance with generally accepted accounting principles and good business practice.
- (2) A licensee shall establish and maintain the following records concerning general accounts:
- (a) a general record reflecting the assets, liabilities, capital, income, and expense of the business, maintained in accordance with generally accepted accounting principles;

- (b) a cash receipt and disbursement journal; and
- (c) a reconciliation of monthly statements to the general record.
- (3) The records referred to in subsections (1) and (2) must be reconciled at least once each month with the bank statements reflecting each escrow account.
  - (4) A licensee shall preserve for at least 3 years after the close of any escrow:
- (a) all bank statements reflecting each escrow account and records of monthly reconciliations of the statements to the general record;
  - (b) all canceled checks drawn on each escrow account;
- (c) any additional records reflecting banking transactions regarding each escrow account, including copies of all receipts for funds transferred from other accounts into each escrow account;
  - (d) all statements of account;
  - (e) all escrow instructions and amendments to them; and
  - (f) all additional records pertinent to each escrow transaction.
  - (5) A licensee shall perform one of the following:
- (a) file annually with the director, on or before April 30, a statement of its financial condition, transactions, and affairs as of the preceding December 31. The director may grant an extension, not to exceed 10 days, on or before the April 30 filing date if the licensee demonstrates good cause for an extension. The financial statement must be certified by an independent public accountant and must be in a form and contain the information prescribed by the director.
- (b) request that the director examine the financial condition, transactions, and affairs of the licensee pursuant to procedures prescribed by the director.

History: En. Sec. 8, Ch. 651, L. 1989.

- **32-7-116. Statement of account.** A licensee shall provide a full statement of an escrow account established under an escrow agreement within 14 days of a written request made by a party to the escrow agreement. The statement must state:
  - (1) credits to principal;
  - (2) interest earned for the period; and
  - (3) other information requested.

History: En. Sec. 9, Ch. 651, L. 1989.

- **32-7-117. Deposit of funds required -- disbursement.** (1) All money deposited in an escrow to be delivered upon the close of the escrow or upon any other contingency must be deposited with a financial institution, as defined in <u>32-6-103</u>, doing business in this state and must be kept separate, distinct, and apart from funds belonging to the escrow business. The funds, when deposited, must be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the escrow business.
- (2) A person may not knowingly keep or cause to be kept any funds or money with a financial institution, as defined in <u>32-6-103</u>, under the heading of "escrow accounts" or any other name designating the funds or money as belonging to the clients of any escrow business, except actual escrow funds deposited with the escrow business.

- (3) Escrow funds are not subject to execution or attachment on any claim against the escrow business.
- (4) Any interest received on funds deposited with an escrow business in connection with any escrow that is deposited in an authorized depository must be paid over to the depositing party to the escrow account and may not be transferred to an account of the escrow business. This section does not limit or restrain the right of the depositing party to contract with respect to the interest received on the deposits by an independent agreement.
- (5) An escrow business may not disburse funds from any escrow account until cash, items, or drafts in an amount sufficient to fund any disbursements from the account have been received and deposited in the account and are available for withdrawal from the account as a matter of right. If sufficient funds are available for withdrawal from the account as a matter of right, required disbursements must be made within 5 business days of the receipt of sufficient funds. For the purposes of this subsection (5), the following definitions apply:
- (a) "Available for withdrawal from the account as a matter of right" means that the bank or savings and loan association in which an item has been deposited considers the item available for withdrawal as a matter of right and that a final settlement will occur in writing with respect to that item.
- (b) "Item" means any check, including a cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order.

History: En. Sec. 10, Ch. 651, L. 1989; amd. Sec. 3, Ch. 65, L. 2003.

#### 32-7-118 through 32-7-120 reserved.

## **32-7-121.** Unauthorized business practices -- penalty. (1) Unauthorized business practices of escrow businesses include but are not limited to the following:

- (a) issuing, circulating, making use of, or publishing, by any means of communication, an advertisement indicating that a person is in the escrow business if that person is not a licensed escrow business;
- (b) soliciting or accepting an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after the signing or initialing of the escrow instruction or permitting any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion, or alteration is signed or initialed by the affected party who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion, or alteration:
- (c) failing to carry out the escrow transactions pursuant to the written escrow instructions unless amended by the written agreement of all parties to the escrow agreement or their assigns;
- (d) accepting any escrow transaction that requires or has required the prepayment, deduction, or withholding of any sum to cover payments on the indebtedness or any prior encumbrance if the payments are not due and payable to the mortgagee or obligee at the time the escrow is established. However, payments may be made on property taxes for the current year or for the next annual premium on hazard insurance.

- (e) refusing to allow parties to an escrow transaction or designated agents of those parties access to the records of the escrow transaction; and
  - (f) failing to promptly distribute funds pursuant to escrow instructions.
- (2) Any licensee who engages in an unauthorized business practice is subject to the revocation or suspension of the licensee's license.

History: En. Sec. 12, Ch. 651, L. 1989.

## **32-7-122. Investigations by director -- desist order -- injunctions or other actions.** (1) The director may investigate, upon complaint or otherwise, if it appears that:

- (a) an escrow business is conducting its business in an unsafe and injurious manner or in violation of this part or any rule promulgated pursuant to this part; or
- (b) a person is engaging in the escrow business without being licensed under the provisions of this part.
- (2) (a) If it appears to the director, upon sufficient grounds or evidence satisfactory to the director, that an escrow business has engaged or is about to engage in any act or practice in violation of this part or any rule or order issued pursuant to this part or that the assets or capital of any escrow business or company are impaired or the licensee's affairs are in an unsafe condition, the director may summarily order the escrow business to cease and desist from the act or practice or the director may apply to the district court of the first judicial district of Lewis and Clark County to enjoin the act or practice and to enforce compliance with this part or for any other appropriate equitable relief.
  - (b) Upon a proper showing, the court may:
- (i) grant a temporary restraining order, followed by a preliminary injunction and a permanent injunction;
  - (ii) appoint a receiver for the defendant or defendant's assets;
  - (iii) cancel the licensee's license; and
  - (iv) order other equitable remedies the court considers necessary and appropriate.
  - (3) The court may not require the director to post a bond.

History: En. Sec. 13, Ch. 651, L. 1989.

# **32-7-123.** Subpoenas -- oaths -- examinations of witness and evidence. (1) In the conduct of any examination, investigation, or hearing, the director may:

- (a) compel the attendance of any person or obtain any documents by subpoena;
- (b) administer oaths;
- (c) examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this part; and
  - (d) require the production of any books, records, or papers relevant to the inquiry.
- (2) If a person refuses to obey a subpoena issued to the director, the district court of the first judicial district of Lewis and Clark County or other district court having proper venue, upon application by the director, may order the person to produce documentary evidence or to give evidence relating to the matter under investigation or in question. If a person fails to obey the order of the court, the person may be punished by the court as contempt of court.

History: En. Sec. 14, Ch. 651, L. 1989.

**32-7-124. Hearings and appeals.** The provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a contested case brought under this part.

History: En. Sec. 15, Ch. 651, L. 1989.